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Attorney for Appellant
HASSAN ABPIKAR

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 11-10192

D.C. 5:08-CR-00560-RMW-1

Plaintiff-Appellee,

v.

HASSAN ABPIKAR,

Defendant-Appellant. /

**RESPONSE TO COURT ORDER AND
MOTION FOR EXTENSION OF TIME**

The undersigned counsel submits the following response to the court's orders of March 5, 2013, and April 5, 2013.

Counsel also requests that the time for filing appellant's opening brief be extended to July 23, 2013, pursuant to Rule 31 of the Federal Rules of Appellate Procedure, as well as Ninth Circuit Rule 31-2.2(b).

DATED: May 6, 2013

Respectfully submitted,

By: /S/Erik Babcock

ERIK BABCOCK

Attorney for Appellant ABPIKAR

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Defendant-Appellant. /

DECLARATION IN SUPPORT OF MOTION

1. The undersigned filed a motion for an extension of time on February 6, 2013.
2. On February 11, 2013 appellant filed a pro se submission.
3. On March 5, 2013 the court ordered counsel to consult with appellant and respond to his pro se submission. The court ordered ruling on the motion for an extension of time deferred. The court later extended the time for counsel's response to the March 5, 2013 order to today, May 6, 2013.

4. After the court's March 5, 2013 order, the undersigned counsel wrote to appellant regarding the issues raised in his pro se submission. Counsel received a lengthy written reply from appellant, dated April 19, 2013. Counsel arranged a legal phone call with appellant at the prison where he is housed. That phone call took place on April 23, 2013, at 2:00 p.m.
5. Counsel believes that any outstanding issues with appellant have been resolved at this point.
6. Appellant is scheduled to be released from prison in late June, 2013.
7. The court deferred ruling on counsel's last motion for an extension of time until counsel had responded to appellant's pro se submission. Counsel has communicated with appellant verbally and in writing regarding appellant's submission and believes any issues resolved.
8. I am not prepared to file the opening brief. I have been and am current still in trial in a murder case in state court, People v. Johnson, Alameda No. H52787. I do not anticipate that trial being done for another couple weeks.
9. Additionally, appellant, through the undersigned counsel, requests that the time for filing appellant's opening brief be extended until one month after he has been released from custody so that he may come to counsel's office after he has been released to review the draft brief and consult with counsel, to approximately July 23, 2013.

10. This is my fifth request for an extension of time.
11. Counsel expects to be able to file the brief within the time requested.
12. I have not contacted respondent since I have been in trial and have no time to make telephone calls during the day. However, I do not believe respondent will be prejudiced since appellant will have served his sentence before this case is concluded.
13. Appellant is currently in federal custody in Lompoc, California serving the sentence imposed in this case with a projected release date in June, 2013.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 6th day of May 2013, at Oakland, California.

/S/Erik Babcock

ERIK BABCOCK

Attorney for Appellant Abpikar

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF. filing system. I certify that all participants in the case are registered CM/ECF users will be served by the appellate CM/ECF system.

DATED: May 6, 2013

/S/Erik Babcock

ERIK BABCOCK

Attorney for Appellant Abpikar